

LABOUR AND EMPLOYMENT DEPARTMENT

ORDER

The 23rd March, 1975

No. 3259-5Lab-75/11253.—Whereas the occupier of M/s Jotindra Steel and Tubes Ltd. and M/s Jotindra Steel and Wire Products, situated at 14/3 Milestone, Mathura Road, Faridabad, has made an application for the amalgamation of the above two factories and treating them as one factory under the name and style "Jotindra Steel and Tubes Ltd., 14/3 Milestone, Mathura Road, Faridabad".

Now, therefore, in exercise of the powers conferred by section 4 of the Factories Act, 1948, the Governor of Haryana hereby directs that both the above-mentioned factories shall be treated as a single factory, namely, Jotindra Steel and Tubes Limited, 14/3 Milestones, Mathura Road, Faridabad.

M. SETH, Commr. & Secy.

LABOUR DEPARTMENT

The 3rd April, 1975

No. 2823-41-75/11359.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Globe Steels, Mathura Road, Ballabgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 96 of 1972

between

SHRI GIAN SINGH WORKMAN AND THE MANAGEMENT OF M/S GLOBE STEELS, MATHURA
ROAD, BALLABGARH

Present—

Shri Onkar Parshad, for the workmen.

Shri H.R. Dua, for the management.

AWARD

Shri Gian Singh workman concerned was in the service of M/s Globe Steels, Mathura Road, Ballabgarh, since 2nd April, 1970. The management allegedly terminated his services on 23rd June, 1972, without giving him any warning, notice or charge-sheet and without holding any enquiry against him. He demanded reinstatement but without success.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal,—vide order No. ID/FD/72/4825, dated 1st December, 1972, with the following term of reference :—

Whether the termination of services of Shri Gian Singh was justified and in order? If not, to what relief is he entitled?

The parties were called upon to put in their respective pleadings. The workman reiterated his demand for reinstatement with the allegation that his services had been terminated by the management without any justification and in an illegal manner and he was, therefore, entitled to the relief asked for. It was further contended that the letter dated 20th June, 1972, of the management wherein he is admitted to have confessed his guilt of taking an unauthorised person up to the canteen was just an after-thought.

The management contested the claim of the workman on merits controverting his above allegations. It was stated that it was a case of self-abandonment of service by him. Some preliminary objections were also raised in the written statement pleading *intalia* that the demand, the subject-matter of the present reference, had not been properly raised first on the management and rejected by it as required by law, and as such the reference was invalid.

The following five issues arose for determination in the case :—

- (1) What is the effect of the liquidation proceedings alleged to be pending in the High Court of Delhi ? (on management)
- (2) Whether the reference is bad in law for the reasons stated in the written statement of the management ? (on management)
- (3) Whether the Appropriate Government was the Delhi Administration to make the reference and not the Haryana State Government ? (on management)
- (4) Whether the demand in question was first raised on the management and rejected by it before taking up the matter for conciliation? If not, with what effect?
- (5) Whether the termination of services of Shri Gian Singh was justified and in order? If not, to what relief is he entitled?

The parties have been heard on issues Nos. 1 to 4 which have been treated as preliminary issues. The management has examined one witness Shri O. P. Gupta, Head Time Keeper, M. W. I, who has deposed that the present workman had not raised any dispute directly on the management. He has further stated that liquidation proceedings in respect of the company were pending before the High Court at Delhi and a Committee appointed by the High Court was looking after the management of the business in the factory under instructions from the High Court.

In rebuttal Shri Onkar Parshad, authorised representative of the workman, has made his own statement besides tendering into evidence certain documents including the demand notice dated 6th July, 1972, Exhibit W-1, letters alleged to have been written by the workman to the management dated 19th June, 1972, Exhibit W-2, dated 22nd May, 1972, Exhibit W-3, the order of suspension of workman issued by the management on 17th June, 1972 Exhibit W-4, another letter of the management dated 20th June, 1972, whereby the period from 17th June, 1972 to 20th June, 1972, was to be treated as leave without pay in view of the confession of the guilt by the workman that he had taken an unauthorised person to the canteen.

The case has been argued at length on both sides and I have carefully gone through the evidence on record.

There is not much to discuss for the management with regard to issues Nos. 1 and 3. The learned representative of the management has not been able to satisfy me as to what is the effect of the liquidation proceedings pending before the High Court at Delhi in respect of this Company nor has he been able to show me any law that the Appropriate Government was debarred from referring the disputes (if any existed between the parties) for adjudication to this Court in accordance with the provisions of the Industrial Disputes Act, 1947, on account of the pendency of liquidation proceedings in the High Court. That disposes of issue No. 1 which is decided against the management.

With regard to issue No. 3 it has been argued that the head office of the company is at Delhi and, therefore, the Delhi Administration was the Appropriate Government to refer the dispute for adjudication, if any. This contention again is not warranted by the facts of the case. The factory in which the present workman was working is situated at Ballabgarh. He performed his duty and got his wages at Ballabgarh. The administrative control over him was also exercised by the management at Ballabgarh where they had got the Factory Manager. The letter dated 17th June, 1972, placing him under suspension Exhibit W-4 and the letter dated 20th June, 1972, whereby the period of suspension was directed to be treated as leave without pay on the admission of the fault by the workman were also issued by the Factory Manager at Ballabgarh. Nothing worth consideration has been brought on record by the management to show that the service condition of this workman were under the direct control or supervision of the head office at Delhi. In the circumstances, the contention raised by the management without the Appropriate Government in the matter was the Delhi Administration is absolutely without force. The workman concerned has been residing and working in the factory at Ballabgarh and receiving his wages etc. there and that being so the Appropriate Government in the case was the Haryana State Government and not the Delhi Administration. Issue No. 3 is also decided against the management.

Issue No. 2 and 4 are interconnected may safely be taken up together. The management has raised a specific plea in the written statement that the demand, the subject-matter of the present reference, was never raised directly on the management and rejected by it before the matter was taken up for conciliation and, therefore, no industrial dispute existed between the parties which could validly be referred for adjudication to this Court. The law is well settled on this point. As held in the oftquoted judgement of Hon'ble the Supreme Court in the Sindhu Resettlement Corporation case, the demand has first to be raised on the management and rejected by it before taking up the matter for conciliation so as to constitute an industrial dispute within the meaning of the law.

The burden was on the workmen concerned to satisfy this requirement of law. He has not come into the witness box to make a statement on oath and stand the test of cross examination that he had approached the management direct for his reinstatement before giving the demand notice whereupon conciliation proceedings were started. Shri O. P. Gupta Head time-keeper of the management who deals with the labour matters has sworn testimony to the fact that no demand was received direct from the workman. The mere communication of the demand by the Conciliation Officer to the management in pursuance of the demand notice received by him from the workman concerned by itself is not sufficient to meet the requirements within the meaning of the rule of law laid down by the Hon'ble the Supreme Court in the aforesaid judgement. It was for the workmen to rebut the above allegation of the management as per the statement of the Head time-keeper M.W. 1. For reasons better known to him he has elected not to come into the witness box and make a statement on oath to support his case. Shri Onkar Parshad, the learned representative of the workman, has stated that the dispute was in existence and the management had knowledge of it. He has further referred to me two letters alleged to have been written by the workman to the management on 19th June, 1972 and 22nd May, 1972 before giving the demand notice on 6th July, 1972. These letters were admittedly not written in his presence nor under his instructions. He had further not appeared for the workman in the conciliation proceedings. He in fact came into the picture only when the authority letter was executed by the workman in his favour on 29th March, 1973 to appear and fight his case in the present reference. Moreover, the Head Time-keeper M. W. 1 has not been confirmed with these documents. In the circumstances the bald statement of Shri Onkar Parshad the authorised representative of the workman in the present proceedings cannot be considered sufficient to refute the contention of the management that the demand the subject matter of the present reference was not properly raised, as required by law. He has not been able to satisfy me to the contrary.

So, for the reasons aforesaid the fact remains that the demand covered by the present reference was not first raised by the workman Shri Gian Singh direct on the management and rejected by it before initiating the conciliation proceedings so as to constitute an industrial dispute within the meaning of law. Issue No. 2 and 4 are, therefore, decided against the workman holding that the demand having not been properly raised on the management in accordance with law, no industrial dispute existed between the parties which could validly be referred for adjudication.

In view of my above findings on issue Nos. 2 and 4, it is not necessary to go into the merits of the case for the simple and obvious reason that, in the absence of any industrial dispute between the parties, the reference itself is bad in law and without jurisdiction and the workman concerned cannot be entitled to any relief. The award is made accordingly but without any order as to costs.

O. P. SHARMA,

Dated the 3rd March, 1975.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 388, dated 3rd March, 1975

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad

The 4th April, 1975

No. 3230-4 Lab-75/11428.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Sikands Ltd., Plot No. 61, Faridabad, N.I.T.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 28 of 1975

between

SHRI MANVIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S SIKANDS
LTD., PLOT No. 61, FARIDABAD N.I.T.,

Present :—

Nemo, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Manvir Singh workman concerned was in the services of M/s Sikands Ltd., Plot No. 61, Faridabad N.I. T.. The following dispute between him and the management was referred for adjudication to this Tribunal, by order No. ID/FD/74/1165/2880, dated 21st January, 1975 of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the transfer of Shri Manvir Singh from Production Department to Toolroom Department was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, usual notices were given to the parties. No statement of claim has been filed by the workman concerned and he has further elected not to appear in person or through authorised representative. The management on the other hand has pleaded settlement of the dispute and a memorandum of settlement under section 12(3) executed before the Conciliation Officer, Faridabad, has been filed. According to the settlement, which is signed by the workman himself and by Shri H. L. Narula, Assistant Manager for the management, the dues of the workman have been paid to him on the following day as agreed. Shri H. L. Narula has sworn testimony to the genuineness of the settlement and payment of the full dues to the workman according to the terms and conditions given in the memorandum of settlement dated 28th January, 1975 copy Ex. M-1. There is apparently no reason to disbelieve the above plea of the management especially when the workman concerned is not coming forward to pursue his case.

In view of the above I am satisfied that the settlement has been amicably settled between the parties as discussed above and a no dispute award is, therefore, given in terms of the above settlement but without any order as to costs.

Dated the 13th March, 1975.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 556, dated the 17th March, 1975

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh; as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer

Industrial Tribunal, Haryana,
Faridabad.

Dated 17th March, 1975

No. 3232-4Lab.-75/11452.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s United Oil Mill Machinery and Spares Private Limited, Mathura Road, Ballabgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 194 of 1974

between

SHRI AMAR SINGH SHARMA, WORKMAN AND THE MANAGEMENT OF M/S UNITED
OIL MILL MACHINERY AND SPARES PRIVATE LTD., MATHURA ROAD, BALLABGARH

Present.—

Shri Amar Singh Sharma, concerned workman.

Nemo, for the management.

AWARD

The following dispute between the management of M/s United Oil Mill Machinery and Spares Private Limited, Mathura Road, Ballabgarh and its workman Shri Amar Singh Sharma was referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 which was registered as Reference No. 153 of 1974.

Whether the termination of services of Shri Amar Singh Sharma was justified and in order? If not, to what relief is he entitled?

The parties have put in their pleadings necessary issues arising therefrom have been framed. The case is now fixed for evidence on 30th April, 1975.

In the meantime another order of reference with regard to the same dispute and between the same parties has been received with the same term of reference and registered as Reference No. 194 of 1974. Obviously there cannot be two reference with regard to the same dispute between the same parties at one and the same time. Since the necessary proceedings for the adjudication of the dispute are being held in the reference made earlier and registered as Reference No. 153 of 1974 as mentioned above, the proceedings are called for in the present reference which should stand rejected as being unnecessary and I order accordingly.

O. P. SHARMA,

Dated 12th March, 1975.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 555, dated 17th March, 1975

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department's, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 17th March, 1975.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 3278-4Lab.75/11456.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the Management of M/s Haryana Roadways, Rohtak.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA ROHTAK.

Reference No. 59 of 1972

Between

SHRI OM PARKASH AND THE MANAGEMENT OF HARYANA ROADWAYS, ROHTAK.

Present: —

Shri C. B. Kaushik for the workman.

Shri Suresh Chander for the management.

AWARD

Shri Om Parkash workman concerned was in the service of Haryana Roadways, Rohtak as a Conductor since 1st September, 1968. His services were terminated by the management vide order dated 4th November, 1970 as being no longer required. Feeling aggrieved, he raised a demand for reinstatement but without any satisfactory response from the management. The matter was taken up for conciliation which also ended in failure.

On receipt of the failure report from the Conciliation Officer the Governor of Haryana, referred the dispute for adjudication to this Court, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 vide order No. ID/PK/82-B-71/5905 dated 18th February, 1972, with the following term of reference.

"Whether the termination of services of Shri Om Parkash was justified and in order? If not, to what relief is he entitled?"

The parties were called upon to put in their respective pleadings. It was contended on behalf of the management that there was some charge of misconduct against him which was duly established in a proper enquiry held by the Traffic Manager after giving him full opportunity of being heard and since he was holding the post of a Conductor purely on temporary basis his services were terminated by order of the General Manager. No statement of claim or replication was filed by the workman concerned to refute the above allegation of the management. My learned predecessor framed the following issues in the case.

1. Whether the termination of services of Shri Om Parkash was justified because :—
 - (a) He was serving purely temporary capacity;
 - (b) His services no longer required beyond 2nd November, 1970.
2. Whether the termination of services of Shri Om Parkash was justified and in order? If not to what relief is he entitled?

The management has relied upon the enquiry proceedings and documents relating thereto, records whereof have been produced in original. On the other hand, the workman concerned has made his own statement and admitted the charge-sheet dated 1st July, 1970 Exhibit M. 1, his explanation to the same dated 13th July, 1970 Exhibit M. 2, the final show cause notice dated 23rd September, 1970 Exhibit M. 3 and his reply dated 3rd October, 1970 Exhibit M. 4. According to him, the termination order was received on 4th November, 1970. He has further admitted that he had filed an application under section 33-C(2) and his wages for 2nd and 3rd November, 1970 had been paid to him. He has, however, denied that any personal hearing was given to him by the General Manager.

Arguments have been addressed on both sides and I have given a careful consideration to the material on record.

As already pointed out, the case for the management is that the appointment of the present workman was on a purely temporary basis and since he was found guilty of charge of misconduct in misappropriating Government money by charging fare from 8 passengers without issuing them the tickets on 23rd May, 1970 and on 7th June, 1970 on bus No. 355 and 404 respectively on Rohtak Kairo and Kairo Rohtak routes. He was not considered to be a desirable person to be kept in service and the General Manager, therefore, passed the impugned order of terminating his services. While admitting the receipt of the charge-sheet and submission of explanation by him the workman concerned has specifically denied the above allegation levelled by the management. The burden was naturally upon the management to prove the above case against the workman and after going through the documents on record, I am satisfied that the management has succeeded in discharging this burden. The workman has brought nothing on record to show that his services were of a permanent nature or he had ever been confirmed by the management. He admits the communication of the charges levelled against him, his explanation to the same and his participation in the enquiry. His plea that he was not allowed to cross-examine the witness and to produce his defence has not been sustained by any evidence worth consideration. His contention that the General Manager did not give him any personal hearing is also falsified from the record. There is a clear note of the General Manager that this workman had appeared before him but not given any satisfactory explanation and further that during the period of 2 years of service he had committed 8 offences and the warnings given to him in the past had no desirable effect and as such he deserved to be relieved of his duties. Nothing to the contrary has been established by the workman by oral or documentary evidence.

It will not be out of place to consider here that in spite of the above conduct of the workman in the discharge of his duties, the management showed him indulgence in not dismissing him from service on grounds of misconduct but passed an order of termination simpliciter that his services were no longer required without attaching any stigma against him manifestly with a view not to mar the chances of his future employment somewhere else.

So, taking into consideration the facts and the circumstances of the case discussed above, I do not find anything wrong with the action of termination of the services of the present workman, the issues involved are decided against him and the termination of his services is held to be perfectly justified and in order and, in the result, he is not entitled to any relief by way of reinstatement or payment of back dues. The award is made accordingly but without any order as to costs.

O. P. SHARMA,

Dated 17th March, 1975.

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 709, dated the 21st March, 1975

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 3274-41-75/11458.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Ego Metal Works (P) Ltd., Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 28 of 1970

Between

SHRI MOHAN LAL AND OTHERS AND THE MANAGEMENT OF M/S EGO METAL WORKS
(P) LTD, GURGAON

Present :—

Shri Shardha Nand, for the workmen.

Shri D.C. Chanda, for the management.

AWARD

Sarvshri Mohan Lal, Devi Ram, Partap Singh, Puran Chand, Kishan Sharma, Tharu Ram, Tara Chand and Karan Singh were in the service of M/s Ego Metal Works (P) Ltd., Gurgaon. The management dismissed them from service. Feeling aggrieved, they demanded reinstatement with continuity of previous service and full back wages but without success. The matter was taken up for conciliation by means of separate demand notices given by Shri Karan Singh and the remaining workers named above. The conciliation, however, ended in failure in both the cases.

On receipt of the failure reports from the Conciliation Officer, the disputes of the workers were referred for adjudication to this court, in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947. The dispute relating to Sarvshri Mohan Lal, Devi Ram, Partap Singh, Puran Chand, Kishan Sharma, Tharu Ram and Tara Chand was registered as reference No. 22 of 1970 with the following term of reference.

“Whether the dismissal of Sarvshri Mohan Lal, Devi Ram, Partap Singh, Puran Chand, Kishan Sharma, Tharu Ram and Tara Chand were justified and in order? If not, to what relief are they entitled?”

The other dispute in respect of Shri Karan Singh was registered as reference No. 30 of 1970, the term of reference being as given under.

“Whether the dismissal of Shri Karan Singh was justified and in order? If not, to what relief is he entitled?”

There being similar questions of law and fact involved in both the cases, the same were consolidated and the proceedings were recorded in reference No. 28 of 1970.

Some of the workmen concerned have entered into a settlement with the management as per terms and conditions given in the application Exhibit M.1 addressed to the Court. Statements of the authorised representatives of the parties have been recorded.

Sarvshri Puran Chand, Tara Chand, Partap Singh in reference No. 28 of 1970 and Shri Karan Singh in the connected reference No. 30 of 1970 have given up their claim for reinstatement or re-employment as they have joined service somewhere else. They have, however, claimed wages upto the date of dismissal, wages in lieu of earned leave, bonus and gratuity as may be due to them and the management has agreed to pay the same.

In view of the above, no further proceedings are called for so far as these 4 workmen Sarvshri Puran Chand, Tara Chand, partap Singh and Karan Singh are concerned and an interim award is made in terms of the above statements made on both sides holding that they would be entitled to receive from the management their wages up to the date of dismissal from service, wages in lieu of unavailed earned leave, bonus and gratuity amounts as may be found due to them, but they will not be entitled to re-instatement or re-employment. In the circumstances, there shall be no order as to costs. The case relating to the remaining workmen Sarvshri Mohan Lal, Devi Ram, Kishan Sharma and Tharu Ram who have not yet settled their dispute with the management shall, however, proceed according to law.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

Dated 19th March, 1975.

No. 707, dated the 21st March, 1975

Forwarded (four copies) to the Secretary to Government, of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 3231-4175/11460.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the Management of M/s Anand Weaving Mills, Private Limited, Plot No. 6, N.I.T., Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Reference No. 129 of 1974

between

SHRI RAM JEET WORKMAN AND THE MANAGEMENT OF M/S ANAND WEAVING
MILLS, PRIVATE LIMITED, PLOT NO. 6, N.I.T., FARIDABAD

Present:

Shri Onkar Parshad for the workman.

Shri Jaswant Singh for the management.

AWARD

Shri Ram Jeet Workman concerned was in the service of M/s Anand Weaving Mills Private Limited, Plot No. 6, N. I. T., Faridabad. His services were terminated by the management on 4th March, 1974 allegedly without any notice, warning or charge sheet. Feeling aggrieved, he demanded reinstatement but was without success.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this Tribunal vide order No. ID/FD/74/31131, dated 11th September, 1974 with the following terms of reference.

Whether the termination of services of Shri Ram Jeet was justified and in order? If not, to what relief is he entitled?

The parties were called upon to put in their respective pleadings. The management contested the claim of the workman pleading *inter alia* that the description of the management has not been correctly given in the order of reference, that the demand the subject matter of the dispute was not first raised on the management and rejected by it before taking up the matter for conciliation and as such no industrial dispute existed between the parties which could validly be referred for adjudication, that it was a case of self abandonment of service by the workman who had submitted his resignation and as such it was not covered by section 2-A of the Industrial Dispute Act, 1947. In his replication the workman controverted the above allegation of the management according to him it was

within a knowledge of management that he was its employee and if at all the description of the management has been wrongly given in the order of reference the error being of clerical nature the reference could not be held to be invalid on this technical ground. It has further urged that the so called resignation of the workman was obtained by the management by coercion.

From the pleadings of the parties the following issue arose for determination in the case.

- (1) Whether the description of the management has been correctly given in the order of reference ? If not, with what effect ? (on workman)
- (2) Whether the demand, the subject matter of the present reference was first raised on the management and rejected by it before taking up the matter for conciliation ? If not, with that effect ? (on workman)
- (3) Whether it is a case of self abandonment of service by resignation and as such is not covered by section 2-A of the Industrial Disputes Act, 1947? (on management)
- (4) Whether the resignation in dispute was obtained from the workman by coercion (on workman)
- (5) Whether the termination of services of Shri Ram Jeet was justified and in order ? If not, to what relief is he entitled ?

The management has examined to witnesses, namely, Shri Chhotu Ram a workman in the concern M. W. 1 and Shri M. K. Aggarwal, Factory Manager M. W. 2. According to Shri M. K. Aggarwal, M. W. 2 the correct description of the concern is M/s Anand Weaving Mills, Faridabad and it has wrongly been described as M/s Anand Weaving Mills (P) Ltd., Faridabad. He has further stated that the resignation Ex. M. 1 was Voluntarily given by the workman and it was duly accepted by him on 7th March, 1974. According to this witness notice of conciliation, dated 12th April, 1974, Ex. M. 2 had been received from the Conciliation Officer and the demand notice, dated 10th April, 1974, Ex. M. 3 had been received by registered post Ex. M. 4. He has also admitted the signatures of the workman on the letter, dated 2nd April, 1974 Ex. M. 5 addressed to the Conciliation Officer. In cross-examination, he has strongly refuted the suggestion that the resignation of the workman had been obtained from him by force.

No evidence has been led on behalf of the workman on the preliminary issues Nos. 1 and 2 and reliance has been placed only upon the documents already on record.

Arguments have been heard on the preliminary issue as desired by the learned representative of the parties. As already observed one of the contentions raised on behalf of the management is that its description has not been correctly given in the order of reference. The concern is known and styled as M/s Anand Weaving Mills, Faridabad but in the order of reference it has been described as M/s Anand Weaving Mills (P) Ltd., Faridabad.

The workman has brought nothing on record to show that the description of the management, as given in the order of reference, is correct and in spite of the specific objection raised in this behalf in the written statement no attempt has been made by him to get the necessary correction made, by approaching the Government, in the order of reference. The authorised representative has contended that this Tribunal has wide powers under section 18(3) of the Industrial Disputes Act to add any party to the reference which may be necessary for the proper adjudication of the dispute. I am afraid, the contention is without substance and has no relevancy to the matter in issue in the case. Section 18(3) of the Industrial Disputes Act does not contemplate the making of such corrections in the order of reference, which would be tantamount to enlarging the scope of the reference. The Industrial Tribunal or for that matter, the labour Court has to adjudicate upon the dispute between the parties in accordance with the order of reference and has no power to amend, alter or enlarge the scope of the reference as made by the appropriate Government. The error in the instant case can not be considered to be of clerical nature because in the demand notice leading to the reference also the description of the management was given as M/s Anand Weaving Mills (P) Ltd., Faridabad instead of M/s Anand Weaving Mills which is the correct description.

The fact, therefore, remains that the dispute has not been properly referred between the workman concerned and his real employer apparently due to the mistake or mis-understanding of the workman himself and even if the award is made in the reference in the present form it would not be executable against the real employer of the workman and would give rise to complications, if and when the award is sought to be implemented. The proper remedy of the workman was to seek amendment of the order of reference by approaching the Government as soon as this defect was pointed out in the written statement filed by the management in the case. But for reasons better known to him he has been ill-advised not to take this step. In any case, the reference as it is can not proceed and stands to be rejected on this very ground. Issue No. 1 is accordingly decided against the workman.

Issue No. 2—

With regard to issue No. 2 also the case of Shri Ram Jeet workman is rather weak. The law is well settled on the point. As held by the Hon'ble Supreme Court in the of quoted judgement in the Sindhu Resettlement Corporation case, the demand has first to be raised on the management and rejected by it before taking up the matter for conciliation. But that is not the case here. A perusal of the record would show that the demand notice the subject matter of the reference, dated 10th April, 1974 copy Ex. M. 3 produced by the management was received from the Conciliation Officer,—vide letter Ex. M. 2 intimating that the conciliation meeting had been fixed for 18th April, 1974. The learned representative of the workman has argued that, as a matter of fact, the demand notice had been sent direct to the management under registered cover which is Ex. M. 4 on record. A glance at this registered cover would show that it was delivered to the management on 18th April, 1974 which was the date of the conciliation meeting fixed by the Conciliation Officer,—vide letter Ex. M. 2 has already observed. In other words, the workman had clearly approached the Conciliation Officer before raising the demand direct on the management and the management had no reasonable time to consider the same. The mere communication of the demand by the Conciliation Officer to the management was not sufficient to constitute an industrial dispute within the meaning of the rule of law laid down by Hon'ble the Supreme Court in the aforesaid judgement which has been followed by the High Courts in some other cases.

The learned representative of the workman has drawn my attention to still another document Ex. M. 5 on record which is a letter, dated 2nd April, 1974 addressed by the workman to the Conciliation Officer, Faridabad questioning the validity of the termination of his service by the management on 4th March, 1974. There is no evidence to show that a copy of this letter was ever sent to the management. A perusal of this letter would further reveal that the name of the employer has been given as the Manager East India Cotton Mills N.I.T., Faridabad. In the circumstances the workman can not take advantage of this letter to show that he had raised the demand first on the management before taking up the matter for conciliation as required by law.

It would thus appear that the demand in question had not been properly raised by the present workman by satisfying the requirements of law as discussed above, and that being so it could not be held that an industrial dispute existed between the parties which could validly be referred for adjudication. Issue No. 2 is accordingly decided against the workman and in favour of the management.

Issue Nos. 3 and 4

Issues Nos. 3 and 4 relates to the merits of the case. The management has led evidence on these issues also but the workman has yet to put his case. His authorised representative having pressed that the preliminary issues be decided first; it is not necessary to go into these issues and the merits of the case as in view of my above findings on the preliminary issue Nos. 1 and 2. The reference stands be rejected on account of the incorrect description of the management given in the order of reference and for want of existence of industrial dispute between the parties as the demand has not been properly raised by the workman, as required by law. In the result, he is not entitled to any relief in the present reference. The award is accordingly made but without any order as to costs.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated March 12, 1975.

No. 557, Dated 17th March, 1975

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated 17th March, 1975.

M. SETH,

Commissioner and Secretary to Government,
Labour and Employment Departments, Haryana.